

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

ANDRE FILLMORE, §
§
Plaintiff, §
§
vs. § **CIVIL ACTION NO. 4:17-cv-00746**
§
LIBERTY INSURANCE
CORPORATION, §
§
Defendant. §

DEFENDANT'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446(a) and Local Rule CV-81(a), Defendant Liberty Insurance Corporation (“Liberty” or “Defendant”) hereby files this *Notice of Removal*, removing this action from the 67th Judicial District Court of Tarrant County, Texas to the United States District Court for the Northern District of Texas, Fort Worth Division. Removal is based on diversity jurisdiction because there is complete diversity between Plaintiff Andre Fillmore (“Plaintiff”) and Defendant, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In support of its *Notice of Removal*, Defendant respectfully shows the Court as follows:

I.
INTRODUCTION

This dispute arises from Plaintiff’s claim for alleged storm damage to Plaintiff’s property located at 9082 Rushing River Drive, Fort Worth, Texas 76118 (the “Property”). Plaintiff alleges that Defendant breached a policy of insurance and violated certain provisions of the Texas Insurance Code and Texas Deceptive Trade Practices Act (“DTPA”) by, among other things, failing to pay Plaintiff’s claim for damages allegedly resulting from a storm.

On August 14, 2017, Plaintiff filed his Original Petition in the 67th Judicial District Court of Tarrant County, Texas naming Liberty as a defendant. Liberty was served with a citation and a copy of Plaintiff's Original Petition on August 17, 2017 through its registered agent for service of process. On September 8, 2017, Liberty timely filed an answer to Plaintiff's Original Petition. This *Notice of Removal* is being filed within thirty (30) days of service of the Petition, and is thus timely filed under 28 U.S.C. §1446(b). As explained below, removal is proper because there is complete diversity of citizenship between the parties, and it is apparent from the face of Plaintiff's Original Petition that the amount in controversy exceeds \$75,000.00.

II.
BASIS FOR REMOVAL

A. DIVERSITY OF CITIZENSHIP

Removal is proper because there is complete diversity between the parties. *See* 28 U.S.C. § 1332(a). Plaintiff is a resident and citizen of Texas. *See* Plaintiff's Original Petition at ¶ 1. Liberty is a corporation organized under the laws of the State of Illinois with its principal place of business in Boston, Massachusetts. For diversity purposes, Liberty is a citizen of Illinois and Massachusetts. Accordingly, there exists complete diversity of citizenship between the Plaintiff and Liberty.

B. AMOUNT IN CONTROVERSY

Generally, the amount in controversy for purposes of establishing federal jurisdiction should be determined by the plaintiff's complaint. *See De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1411-12 (5th Cir. 1995). Here, it is apparent from the face of Plaintiff's Original Petition that his claims exceed \$75,000.00. In paragraph 4 of the Petition, Plaintiff states: "Plaintiff currently seeks monetary relief over \$100,000, but not

more than \$200,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorneys' fees." Plaintiff's Original Petition at ¶ 4.

Therefore, removal of this action is proper under 28 U.S.C. § 1441(a). This is a civil action brought in state court, and this Court has original jurisdiction over the subject matter pursuant to 28 U.S.C. § 1332(a). In addition, Plaintiff's citizenship is diverse from Liberty. Finally, as alleged in his Petition, Plaintiff seeks to recover in excess of \$100,000.00 from Defendant. Therefore, the amount in controversy in this case clearly exceeds \$75,000.00.

III.
CONSENT TO REMOVAL UNNECESSARY

Liberty is the only defendant named in Plaintiff's Original Petition. Thus, no additional consent is needed for removal.

IV.
COMPLIANCE WITH PROCEDURAL REQUIREMENTS

As required by Local Rule 81.1(a), filed concurrently with this Notice of Removal is a completed civil cover sheet, supplemental civil case cover sheet and a signed Certificate of Interested Persons that complies with Local Rule 3.1. Additionally, the following exhibits are attached:

- **EXHIBIT A** – Index of all documents filed in state court;
- **EXHIBIT B** – Register of Actions in the state court proceeding; and
- **EXHIBITS C-1 through C-4** – A copy of each document filed in the state court action.

Pursuant to Section 28 U.S.C. §1446(d), Defendant will give written notice of the filing of this *Notice of Removal* to all adverse parties promptly after the filing of same.

Pursuant to 28 U.S.C. §1446(d), Defendant will file a true and correct copy of this *Notice of Removal* with the District Clerk, Tarrant County District Court, Texas, promptly after filing of same.

V.
REQUEST FOR RELIEF

Based on the foregoing, Defendant Liberty Insurance Corporation respectfully requests that the above-styled action now pending in the 67th Judicial District Court of Tarrant County, Texas be removed to the United States District Court for the Northern District of Texas, Fort Worth Division. Liberty further requests all such other and further relief to which it is justly entitled.

Respectfully submitted,

/s/ Mark D. Tillman

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**ATTORNEYS FOR DEFENDANT
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CORPORATION**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been forwarded to Plaintiff's counsel of record via electronic means and/or facsimile on September 14, 2017, in accordance with the FEDERAL RULES OF CIVIL PROCEDURE.

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/s/ Mark D. Tillman

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